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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

TODD A. ASHKER and DANNY TROXELL,

Plaintiffs,

v.

GOVERNOR ARNOLD  
SCHWARZENEGGER, R. Q. HICKMAN,  
EDWARD S. ALAMEDIA, JR., JEANNE  
WOODFORD, WARDEN JOE McGRATH,  
CAROL A. DALY, SHARON LAWIN, CAL  
TERHUNE, GEORGE LEHMAN, MR. ROOS,  
BOOKER T. WELCH, BRETT GRANLUND,  
LARRY STARN, KENNETH L. RISEN, JONES  
M. MOORE, GRAY DAVIS, PETE WILSON,  
JAMES GOMEZ,

Defendants.

Case No.: C04 1967 CW

**STIPULATION AND ORDER  
REGARDING ATTORNEY'S FEES**

Judge: The Honorable Claudia Wilken  
Courtroom: 2

COUNSEL FOR THE PARTIES STIPULATE AS FOLLOWS:

1. On May 19, 2004, plaintiffs TODD ASHKER and DANNY TROXELL filed the above-referenced 42 U.S.C § 1983 action against defendants. This action, in part, disputed a former policy of the Pelican Bay State Prison Security Housing Unit (PBSP-SHU) regarding hardcover books.

2. On March 8, 2006, this Court entered a declaratory judgment in plaintiffs' favor on the hardcover book claim and also entered a judgment of qualified immunity from liability for defendant McGRATH, among other defendants. No money damages or injunctive relief was obtained pursuant

1 to the March 8, 2006 order. A true and correct copy of the March 8, 2006 order is attached hereto as  
2 Exhibit A.

3 3. The parties hereby stipulate that attorney's fees, costs, and related expenses for the total  
4 amount of \$9,576.76, is full and final satisfaction of any obligation on the part of defendants to  
5 plaintiffs arising from the subject declaratory judgment regarding the substantive PBSP-SHU  
6 hardcover book policy as set forth in the March 8, 2006 Order and any and all subsequent actions or  
7 proceedings related thereto.

8 4. Nothing in this stipulation shall be construed as an admission of liability or an admission  
9 of responsibility for damages, costs or fees on the part of the defendants, the California Department  
10 of Corrections and Rehabilitation, its employees or former employees or any of its institutions.  
11 Payment of the fees set forth in Paragraph 3 is made only in compromise of a disputed claim.

12 5. This stipulation further applies to any challenge on plaintiffs' part to the substantive  
13 PBSP-SHU hardcover book policy in (1) the above captioned case, and (2) any further case or  
14 appeal.

15 6. Plaintiffs and their attorney expressly waive and assume the risk of any and all claims for  
16 attorney's fees, costs, and related expenses which exist as of this date for which they do not know or  
17 suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if  
18 known, would materially affect their decision to enter into the settlement agreement. If any future  
19 claims by plaintiffs arises from the subject hardcover book policy in any form, including a claim for  
20 damages against defendant McGRATH or any other individual CDCR employee(s) or former  
21 employee(s), such future claim (if any) shall be subject to a credit for any future award of attorney's  
22 fees, costs and related expenses to the extent that such future claims overlap with the hardcover book  
23 claim.

24 7. Plaintiffs and their attorney further agree that plaintiffs will not present any request for  
25 attorney's fees regarding the hardcover book claim in (1) the above captioned case and (2) any  
26 further case or appeal.

27 8. At the time that plaintiffs' attorney signs this settlement agreement, plaintiffs' attorney  
28 shall also sign and return to counsel for defendants a Payee Data Record form. Upon receipt of the

1 fully executed Stipulation and Order Regarding Attorneys' Fees and the signed Payee Data Records  
 2 from plaintiffs' attorney, counsel for defendants will forward the documentation to the CDCR for  
 3 processing. The parties understand that the payment is contingent upon the passage of the 2006-  
 4 2007 State budget and the allocation of sufficient funds to the CDCR.

5 9. Should any provision of this stipulation be held invalid or illegal, such illegality shall not  
 6 invalidate the whole agreement, but the agreement shall be construed as if it did not contain the  
 7 illegal part and the rights and obligations of the parties shall be construed and enforced accordingly.

8 10. This stipulation shall constitute the entire agreement between the parties, for any and all  
 9 attorney's fees, costs, and related expenses as to the hardcover book claim, and it is expressly  
 10 understood and agreed that this stipulation has been fully and voluntarily entered into by all parties,  
 11 and each of them. It may not be altered, amended, modified, or otherwise changed in any respect  
 12 except by writing duly executed by the parties to this agreement.

13 11. This stipulation shall be governed by and construed in accordance with the laws of the  
 14 State of California.

15 12. Facsimile signatures shall bind the parties to this agreement.

16 13. The parties may execute and deliver this document in any number of counterparts or  
 17 copies and each counterpart shall be deemed an original.

18 IT IS SO STIPULATED.

19  
 20 Dated: June 14, 2006

LAW OFFICES OF HERMAN FRANCK

21 /s/ Herman Franck

22 By \_\_\_\_\_  
 23 HERMAN FRANCK  
 24 Attorney for Plaintiffs

25 Dated: June 22, 2006

ANDRADA & ASSOCIATES

26 /s/ J. Randall Andrada

27 By \_\_\_\_\_  
 28 J. RANDALL ANDRADA  
 Attorneys for Defendants

IT IS SO ORDERED:

7/7/06

/s/ CLAUDIA WILKEN

Dated: \_\_\_\_\_

\_\_\_\_\_  
CLAUDIA WILKEN, JUDGE  
UNITED STATES DISTRICT COURT

ANDRADA & ASSOCIATES  
PROFESSIONAL CORPORATION

Todd A. Ashker, et al. v. Governor Arnold Schwarzenegger, et al..  
U. S. District Court Case No. C04 1967 CW

## STIPULATION AND ORDER REGARDING ATTORNEY'S FEES

**Attorney for Plaintiffs**

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\_\_\_\_\_ (By Hand) I caused each envelope to be delivered by hand to the person(s) listed above.

(By Telecopy) I caused each document to be sent by fax to the fax as indicated above.

\_\_\_\_\_ (By Overnight Delivery) I caused each envelope to be delivered by overnight delivery to the person(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 22, 2006, at Oakland, California.

/s/ Lilian Roberts

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LILIAN ROBERTS